

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	
)	CRIMINAL NO. 1:10-CR-313
JOSHUA BEHROUZ NABATKHORIAN,)	
)	
Defendant.)	

GOVERNMENT'S RESPONSE TO DEFENSE MOTION
TO STRIKE DOWN SENTENCING PROVISION

The United States of America, by and through its undersigned counsel, moves this Court to deny the defendant's motion to strike down the mandatory minimum sentence provision of Title 18, United States Code, Section 2422(b).

LEGAL STANDARD

In *Tex. v. United States*, 523 U.S. 296, 300 (1998), the Court held that "[a] claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all" (citations and internal quotations omitted). The Court has held that

the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an injury in fact -- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of -- the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (citations and internal quotations omitted).

ARGUMENT

The United States considers the defendant innocent of the charge until this court finds him guilty subsequent to a knowing and voluntary guilty plea or a finding of guilt by judge or jury pursuant to a trial. As neither has occurred, application of the complained-of provision of Title 18, United States Code, Section 2422(b) to the defendant “may not occur as anticipated, or indeed may not occur at all.” *Texas*, 523 U.S. at 300. Therefore, this claim is not yet ripe for adjudication. In addition, any injury suffered by the defendant is not “actual or imminent,” but is instead “conjectural or hypothetical.” *Lujan*, 504 U.S. at 560-61. Therefore, the defendant has no standing to bring this claim at this time.

CONCLUSION

The defendant lacks standing to bring the motion to strike down the mandatory minimum sentencing provision of Title 18, United States Code, Section 2422(b) and the claim is not yet ripe for adjudication.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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